

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DUSTIN ISENHART , individually and on)	
behalf of all other similarly situated,)	Civil Action No. 16-cv-193 SMY/RJD
)	
Plaintiff,)	
)	Judge Staci M. Yandle
v.)	Magistrate Judge Reona J. Daly
)	
NRT TECHNOLOGY CORP. , <i>et al.</i>)	
)	
Defendant.)	

DEFENDANT’S MOTION FOR LEAVE TO FILE REPLY

Defendant NRT Technology Corp. (“NRT”) respectfully requests leave to file a reply in support of its Motion to Deposit Funds with the Court Under Rule 67 pursuant to Judge Yandle’s case management procedures and Local Rule 7.1(g). In support of this motion, NRT states as follows:

1. NRT filed its Motion (Dkt. No. 87) to deposit funds under Rule 67 on November 29, 2016. This motion was based, in part, on the federal district court for the Northern District of Illinois’s decision in *Fulton Dental, LLC v. Bisco, Inc.*, No. 15 C 11038, 2016 U.S. Dist. LEXIS 118658 (N.D. Ill. Sep. 2, 2016).
2. Plaintiff filed his response on December 13, 2016. Dkt. No. 94.
3. The response omits any reference to *Fulton*, which represents the most recent ruling relating to a Rule 67 motion in this circuit.
4. The Supreme Court’s decision in *Campbell-Ewald v. Gomez*, 136 S. Ct. 663 (2016), left open the question of whether the result in that case would be different if actual tender of payment were made as opposed to a mere offer such as the one made under Rule 68. Whether

a class action defendant such as NRT is able to file a Rule 67 motion and the impact of the deposit is an underdeveloped area of the law in light of *Campbell-Ewald*.

5. The paucity of case law on this important issue renders the *Fulton* decision particularly notable given that the circumstances in that case are more than analogous to those present here.

6. NRT seeks leave to submit a reply brief in further support of its pending motion so that this Court has the benefit of as complete a record as possible in considering this question.

WHEREFORE, Defendant NRT Technology Corporation respectfully requests that the Court enter an order granting it leave to submit a reply brief in further support of its Motion to Deposit Funds with the Court Under Rule 67 and granting such other and further relief as the court deems just and proper.

Respectfully submitted,

NRT TECHNOLOGY CORPORATION

By: s/Jennifer A. Warner
One of Their Attorneys

Patrick T. Stanton, *pro hac vice*
Rosa M. Tumialan, *pro hac vice*
Melanie J. Chico
Jennifer A. Warner, *pro hac vice*
10 S. Wacker Dr., Ste. 2300
Chicago, IL 60606
(312) 876-1700

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2016, I electronically filed the foregoing **Defendants' Motion for Leave to Submit Supplemental Authority** using the CM/ECF system which will send notification of such filing to all registered participants.

s/Jennifer A. Warner
Jennifer A. Warner (jawarner@dykema.com)
Dykema Gossett PLLC
10 South Wacker Drive, Suite 2300
Chicago, IL 60606
(312) 876-1700